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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

URIEL RAMOS OCAMPO,

Defendant and Appellant.

D060723

(Super. Ct. No. JCF21838)

APPEAL from a judgment of the Superior Court of Imperial County, Poli Flores, Jr., Judge. Affirmed.

Uriel Ramos Ocampo pleaded guilty to assault with force likely to produce great bodily injury. He failed to appear at his sentencing hearing and several years later, moved to withdraw his guilty plea. The trial court denied the motion. Ocampo appeals, contending (1) the trial court failed to adequately explore whether his plea was part of a "package deal" with his codefendants and thus failed to discover that his plea was not voluntary, and (2) the trial court abused its discretion when it denied his motion to

withdraw his guilty plea without reviewing a transcript of the change of plea proceedings. We reject Ocampo's contentions and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Ocampo's Guilty Plea

In 2008, the People charged Ocampo, Rene Cruz, Antonia Valencia, and Christian Lopez with robbery and assault with a deadly weapon on Leonel Avalos. Ocampo pleaded guilty to a lesser charge of assault with force likely to cause great bodily injury. On the same day, Cruz pleaded guilty and Valencia pleaded no contest to the same charge. Pursuant to the plea agreement, Ocampo would receive credit for time served, be released from jail on the day of the plea, and be placed on three years formal probation.

At the plea hearing, the trial court asked Ocampo if he reviewed his change of plea form with his attorney and understood it. Ocampo responded in the affirmative to both questions. Ocampo also stated that he understood he was giving up his rights to a jury trial, to confront and cross-examine witnesses, to remain silent, and to present evidence. Further, Ocampo stated that nobody threatened him or made other promises to him before he entered the plea agreement. Lastly, the trial court inquired into the factual basis of the plea to which Ocampo's counsel stated that he believed the People would produce evidence showing a physical altercation occurred where Ocampo injured Avalos. Ocampo stipulated that the police reports provided the factual basis for the plea.

The court accepted Ocampo's plea, finding that it was freely and voluntarily made and that there was a factual basis for it. Ocampo was ordered to return for sentencing a month after the plea hearing. He failed to appear for sentencing and a warrant was issued for his arrest.

Ocampo's Motion to Withdraw His Guilty Plea

In 2011, Ocampo appeared in court and claimed that he was deported to Mexico immediately after the plea hearing and thus could not return to court for sentencing. He explained that he turned himself in at the Calexico border port of entry and waited about three years to do that because he did not have money to hire an attorney and it was difficult to return.

At the hearing on his motion to withdraw his plea, Ocampo explained that Cruz was his stepbrother and married to Valencia. When Ocampo and Cruz were in a holding cell together prior to their change of plea hearing, Cruz urged Ocampo to take the plea deal so that Valencia could get out and be with their children. Ocampo testified that he did not want to take the deal, but did so because Cruz threatened to beat him up if he did not. Ocampo was afraid of Cruz because Cruz had a history of violence and gang membership. Cruz also faced additional jail time in Fresno County and expressed concern that a delay in accepting the plea deal would cause the court to discover his criminal history.

Ocampo admitted that he spoke to his attorney before the change of plea hearing, but claimed he could not speak freely because Cruz was close enough to hear his conversation. Ocampo planned to take the deal and speak to his attorney after he got

out of jail. However, he never got the opportunity to speak with his attorney after his plea because he was detained by the Immigration and Naturalization Service and his attorney would not accept his collect calls.

Ocampo testified that he could not remember if the deal was a package deal and his attorney never told him it was a package or that he had to plead guilty in order for Cruz and Valencia to be released that day. However, Cruz told Ocampo that if Ocampo did not change his plea to guilty, they would all have to stay in jail. Ocampo knew that there were benefits to taking the plea deal, including that the robbery charge against him would be dismissed and he would be released on the day he changed his plea.

In regard to the crime, Ocampo testified that Avalos had assaulted Cruz and that he beat up Avalos to defend Cruz. Ocampo admitted that he lied to the police on the night of the crime by telling them that he was in the bathroom at the time of the incident and did not know what happened.

The trial court expressed concern that the transcript of the original change of plea hearing was not available. Nevertheless, after hearing Ocampo's testimony and arguments of counsel, the trial court denied Ocampo's motion.

DISCUSSION

I. Court's Inquiry into Plea

Ocampo contends that he was prejudiced by the trial court's failure to adequately inquire into whether his plea was part of a package deal and the circumstances surrounding the plea. Specifically, he argues that as a result of the lack of inquiry, the trial court failed to discover that his plea was coerced by Cruz's threats. Assuming

Ocampo's plea was part of a package deal, we conclude he has not shown that his plea was in fact involuntary.

The California Supreme Court has upheld the constitutionality of package deal plea bargains that make a plea offer contingent on guilty pleas by all defendants, concluding that they are not coercive per se. (*In re Ibarra* (1983) 34 Cal.3d 277, 286–287 (*Ibarra*), disapproved on another ground in *People v. Howard* (1992) 1 Cal.4th 1132, 1175–1178.) However, the court imposed upon trial courts a duty of inquiry in package deal cases to determine if the plea agreement was coerced or freely given. (*Ibarra*, at p. 288.) The high court concluded that because there are extraneous factors not related to the case present in package deals, "special scrutiny must be employed to ensure a voluntary plea." (*Id.* at p. 287.)

When presented with a package deal plea bargain, a trial court must consider the "totality of the circumstances" of the plea agreement, including (1) whether the inducement for the plea was proper, (2) the factual basis for the plea, (3) the nature and degree of coerciveness, and (4) any other relevant factors. (*Ibarra, supra*, 34 Cal.3d at pp. 288–290.) However, a trial court's failure to make this inquiry does not automatically compel reversal. Rather, in addition to showing that an inquiry was not made, a defendant seeking to set aside a package deal plea agreement must also demonstrate that, considering the totality of the circumstances, the plea agreement was in fact involuntary. (*Id.* at p. 290, fn. 6.)

Here, considering the *Ibarra* factors, the evidence does not support Ocampo's assertion that his plea was involuntary. In regard to the first and second factors, there

was no evidence that the inducement for the plea was improper or that the facts were misrepresented to Ocampo. Rather, Ocampo confirmed that he was involved in an altercation with Avalos. Ocampo's claim that he acted to protect Cruz did not render the plea coercive, especially where Ocampo knew the robbery charge against him would be dismissed and he would be released from jail on the day he changed his plea. This evidence simply does not support Ocampo's claim that the plea negotiations were coercive.

The third *Ibarra* factor concerning the nature and degree of coerciveness pertains to psychological pressures on the defendant, such as a close relationship to the person promised leniency and the effect of physical threats against the defendant. (*Ibarra*, *supra*, 34 Cal.3d at p. 289.) Ocampo testified that he had only known Valencia for a month and was not close to her. Further, although Cruz was Ocampo's stepbrother and lived with him for a short period of time, the two men did not have a particularly close relationship and only saw each other occasionally. Thus, Ocampo's relationship with his codefendants does not suggest that his plea was involuntary.

Relying on *People v. Sandoval* (2006) 140 Cal.App.4th 111 (*Sandoval*), Ocampo contends Cruz's threats against him resulted in an involuntary plea. However, the facts here are distinguishable from *Sandoval*. Sandoval was the sole holdout insisting on taking his case to trial and the court made repeated remarks pressuring Sandoval by characterizing the deal as an "'amazingly good offer,'" "'exceptionally good,'" and carrying a "'really low'" sentence considering the evidence. (*Id.* at p. 119.) In addition to the pressure exerted by the trial court, Sandoval's life was threatened by one of his

codefendants, whom Sandoval knew had been accused of arranging an attack on another inmate in jail. (*Id.* at p. 126.) Only after succumbing to both the pressures of the trial court and the threats of his codefendant did Sandoval agree to plead guilty. (*Id.* at p. 127.)

In the case before us, there are no allegations of impropriety by the trial court nor did Ocampo ever indicate that he wanted to go to trial. Further, the trial court was not persuaded that Ocampo changed his plea as a result of Cruz's threats. After noting that Ocampo shared a cell with Cruz for a month and did not inform counsel at any point during that time of the threats, the trial court stated that it was not convinced that Cruz's "threat was of such a nature that would coerce [Ocampo] into entering into the plea." We accept the trial court's implied credibility finding where, as here, the evidence supports it. (*People v. Adams* (1985) 175 Cal.App.3d 855, 862–863.)

Lastly, we note that Ocampo received a benefit from the plea deal. He was facing a potential strike for the robbery charge and significant prison time. (Pen. Code, §§ 213, subd. (a)(2), 667.5; undesignated statutory references are to this code.) Instead, Ocampo pleaded to a nonstrike offense and received credit for time served, release from jail on the day he changed his plea, and three years formal probation. Ocampo's knowledge of the benefits of the plea deal weighs against his claim that his plea was coerced.

In sum, we conclude Ocampo has not shown that, under the totality of the circumstances, his plea was in fact involuntary.

II. *Availability of Transcript of Change of Plea Proceedings*

Relying on section 1181, subdivision 9, Ocampo next argues that the trial court abused its discretion by denying his motion to withdraw his plea without reviewing a transcript of the change of plea proceedings. We disagree.

Section 1181, subdivision 9, provides that a trial court or reviewing court has the power to set aside a judgment or order where, through no fault of the defendant's, the reporter's notes have been lost or destroyed. (*People v. Valdez* (1982) 137 Cal.App.3d 21, 24–25.) However, reversal is not required "[i]f a record can be 'prepared in such a manner as to enable the court to pass upon the questions sought to be raised' [citation], [because] then there is no rational likelihood or legally cognizable possibility of injustice to the appealing defendant even though a verbatim record certified by the official court reporter cannot be supplied." (*People v. Chessman* (1950) 35 Cal.2d 455, 460.)

Here, it is undisputed that the reporter's transcript of the change of plea hearing was not available to the trial judge at the time that Ocampo moved to withdraw his plea. The trial court, however, allowed Ocampo to "tell his story" and heard arguments from counsel. After hearing the evidence, the trial court undertook a detailed analysis of the *Ibarra* factors, compared this case to *Sandoval*, and subsequently denied Ocampo's motion. On this record, we conclude the trial court acted well within its discretion in denying Ocampo's motion without having reviewed the transcript.

In any event, the transcript of the change of plea proceedings is part of the record before us. Having reviewed that transcript, we conclude there was no prejudice as a

result of its unavailability to the trial court. The transcript reveals that at the change of plea hearing, the trial judge inquired into whether the plea was the result of improper coercion. Ocampo responded that nobody threatened him or made other promises to him in entering the plea agreement. The transcript does not specify whether Ocampo entered into a package deal. We see nothing in the transcript that would have resulted in a different conclusion on Ocampo's motion to withdraw his plea. Further, in undertaking our analysis, we assumed that Ocampo did enter into a package deal and nevertheless concluded that he did not show his plea was involuntary. Accordingly, we conclude there was no prejudice to Ocampo.

DISPOSITION

The judgment is affirmed.

MCINTYRE, J.

WE CONCUR:

MCDONALD, Acting P. J.

O'ROURKE, J.